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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,814	01/14/2002	Gary L. Schroeder	2336	6017

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EXAMINER

TSOY, ELENA

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 11/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,814

Applicant(s)

SCHROEDER ET AL. S.C.

Examiner

Elena Tsoy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/18/2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 1-23 and 34-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 24-30 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Pregozen (US 5,141,803) in view of Noda et al (US 4,785,030) for the reasons of record as set forth in Paragraph No. 3 of the Office Action mailed on April 14, 2004.
3. Claims 31, 32 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Pregozen (US 5,141,803) in view of Noda et al (US 4,785,030), further in view of Rabasco et al (US 2002/0099113) for the reasons of record as set forth in Paragraph No. 4 of the Office Action mailed on April 14, 2004.
4. Claims 31, 33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Pregozen (US 5,141,803) in view of Noda et al (US 4,785,030), further in view of Mochizuki et al (US 4,675,347) for the reasons of record as set forth in Paragraph No. 5 of the Office Action mailed on April 14, 2004.

Response to Arguments

5. Applicants' arguments filed October 18, 2004 have been fully considered but they are not persuasive.

(A) Applicants argue that Pregozen clearly teaches away from the use of berizalkonium chloride and other monomeric quats stating that they could not be used in the production of wipers as "the moistened wipes obtained had an unacceptable slippery feel which rendered them

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unsuitable for marketing." Further, when Pregozen uses benzalkonium chloride, the concentration used is 0.038% which is far in excess of the governmental recommendation of 0.010 to 0.013% for human skin contact. Pregozen does not specify the charge of the web used nor does he suggest that some modification of his technique might be capable of applying anti-microbial action to a surface.

First of all, in contrast to Applicants' argument, the concentration of benzalkonium chloride in "slippery" wipes is 0.140 % (not 0.038%), and wipes are not used for human skin because: benzalkonium chloride is used instead of Cosmosil CQ (20 % active) (See column 7, lines 11-18) which is present in amount of 0.700 % (See column 6, lines 7), and wipes can also be used for inanimate surfaces, e.g. to clean, or deliver active ingredients such as sunscreens, insect repellants (See column 5, line 42-50). Clearly, if wipes should be used for human skin, they would contain far less than 0.010 to 0.013% of benzalkonium chloride as recommended by government, and then wipes would not be slippery anymore.

Secondly, it is held that PATENTS ARE RELEVANT AS PRIOR ART FOR ALL THEY CONTAIN. See *Celeritas Technologies Ltd. v. Rockwell International Corp.*, 150 F.3d 1354, 1361, 47 USPQ2d 1516, 1522-23 (Fed. Cir.1998).

In contrast to Applicants' argument, that *Celeritas Technologies Ltd. v. Rockwell International Corp.* cannot be used in the present case as the issue of *Celeritas v. Rockwell* was anticipation, while in the present case is obviousness. However, Pregozen is also "anticipation" because Noda et al are applied to remedy binders only not antimicrobial agents and wipes.

(B) Applicants argue that Noda et al must be looked at to remedy the deficiencies of Pregozen because Noda et al. does not deal with a nonwoven fabric, does not deal with wet wipe, does not deal with a wet wipe having specified anti-microbial activity and does not deal with the

issue of how to incorporate an effective amount of an acceptable antimicrobial such as benzalkonium chloride into a nonwoven wet wipe.

Pregozen teaches that suitable binders that employed to bind together the fibers thus ensuring that the finished nonwoven sheet has adequate wet strength include **styrene butadiene** polymers among many other polymers (See column 5, lines 2-8).

Noda et al are applied to show suitability of cationically modified **styrene-butadiene** latexes especially with nonionic or preferably cationic surfactants as a binder for treating cellulosic fibers to provide the desired wet strength by binding to negatively charged cellulosic fibers (See column 1, lines 13-18, 51-57; column 2, lines 3-25, 54-69).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used cationically modified styrene-butadiene latexes added thereto nonionic or preferably cationic surfactants as a binder in Pregozen since Noda et al teach that cationically modified styrene-butadiene latexes especially with nonionic or preferably cationic surfactants are suitable for treating cellulosic fibers to provide the desired wet strength.

Therefore, it is not important whether bonded cellulosic fibers of Noda et al are used for making wipes or any other articles, as long as they have adequate wet strength since Pregozen teaches that any bonded cellulosic fibers having adequate wet strength can be used for making wipes.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy whose telephone number is (571) 272-1429. The examiner can normally be reached on Mo-Thur. 9:00-7:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck can be reached on (571) 272-1415. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Elena Tsoy
Examiner
Art Unit 1762

ELENA TSOY
PRIMARY EXAMINER
ETsoy

November 2, 2004